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OFFICE OF PETITIONS

In re Application of
Frederick Anthony Schaeffer et al.
Application No. 09/669,400
Filed: September 22, 2000
Attorney Docket No. 52647-1

ON PETITION

Papers submitted October 4, 2004 seek to correct the inventorship of the above referenced application with the addition of Howard M. Kingston and Abdulaq Al-Khalidi, however without the signatures of Mr. Kingston or Mr. Al-Khalidi. This request is treated under both 37 CFR 1.48 and under 37 CFR 1.47(a).

The petition under 37 CFR 1.48 is DISMISSED.
The petition under 37 CFR 1.47(a) is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. FAILURE TO TIMELY RENEW THE PETITION WILL RESULT IN ABANDONMENT. The reconsideration request should include a cover letter entitled "Renewed Petitions under 37 CFR §§ 1.48 and 1.47.

The application was filed naming Fritz Schaeffer as the sole inventor. It was later learned that Howard M. Kingston and Abdulhaq Al-Khalidi were co-inventors and petitioner seeks under 37 CFR § 1.48(a) to amend the inventive entity by the addition of Howard M. Kingston and Abdulhaq Al-Khalidi. 37 CFR § 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

- (1) a petition including a statement from *each person being added* and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part;
- (2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47;
- (3) the fee set forth in 37 CFR 1.17 (h); and
- (4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

The oath or declaration submitted with the petition is not signed by either Mr. Kingston or Mr. Al-Khalidi. Petitioners argue that joint inventors Kingston and Al-Khalidi appear to be either unwilling or unable to cooperate with the furthering prosecution of the above-identified application and in lieu of a declaration executed by Mr. Kingston and Al-Khalidi, seeks status under 37 CFR § 1.47(a). A grantable petition under 37 CFR § 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Petitioners have shown that the complete application in this matter has been mailed to Mr. Kingston and that while Mr. Kingston has received the package, he has not either responded or returned an executed copy of the oath or declaration or the statement of inventorship error. With respect to Mr. Al-Khalidi, petitioners have shown that the complete application in this matter has been mailed to Mr. Al-Khalidi, that Mr. Al-Khalidi has received it and further that Mr. Al-Khalidi has expressly refused to cooperate with the correction of inventorship and with the filing of the instant application.

However, petitioners have not filed either request under 37 CFR 1.48 and 37 CFR 1.47 with the appropriate fees pursuant to 37 CFR 1.17(h) in effect at the time the petition was filed, a statement of the last known addresses of the non-signing inventors or provided an assent of assignee to correction and/or addition of inventor. The petition therefore fails for lack of compliance with items (2), (3) and (4) under 37 CFR 1.47 and items (2), (3) and (4) under 37 CFR § 1.48.

In view thereof, the inventorship of this application cannot be changed and the petitions cannot be granted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned, Petitions Attorney at (571) 272-3212.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions